IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/08/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.808 OF 1995
AND
CRL. REVISION CASE NO.28 OF 1996
AND
CRL.M.P.NO.10402 OF 2002

C.A.No.808 of 1995

1. Viswanathan
2. Raja Thambi
3. Muthamil Maran .. Appellants

-Vs-

State by Inspector of Police
Pattukottai Police Station
(Cr.No.374/92)
Thanjavur District .. Respondent

CRL.R.C.NO.28 OF 1996 :

Elango .. Petitioner

Vs.

1. Viswanathan
2. Baskaran
3. Rajathambi
4. Senthil
5. Ramalingam
6. Muthamilmaran
7. Duraipandian
8. State rep. by
Inspector of Police
Pattukkottai Police Station
Pattukkottai
(Crime No.374/92) .. Respondents

This criminal appeal and revision case are preferred
under Sections 374 and 397 and 401 Cr.P.C. respectively against the judgment
passed by the learned Sessions Judge, Thanjavur made in S.C.No.195 of 199 4

dated 12.10.1995.

!For Petitioners : Mr.B.Sri Ramulu, SC
for Mr.A.Padmanabhan for A1,3 & 6
in CA.808 of 1995 and
for respondents 1 to 7 in
Crl.RC.28 of 1996

Mr.S.Ravi
for Mr.S.N.Thangaraj
for petitioner in Crl.R.C.28/96

^For Respondents : Mr.O.Srinath
Govt. Advocate(Crl. Side)
for respondent in CA.808 of 1995
and for R8 in Crl.RC.28 of 1996

:COMMON JUDGMENT

This judgment shall govern both Criminal appeal in CA.No.808 of 1995 and criminal revision case in Cr.R.C.No.28 of 1996.

2. The criminal appeal and revision case have arisen from the judgment of the learned Sessions Judge, Thanjavur made in S.C.No.195 of 199 4 wherein the appellants in CA.No.808 of 1995 were ranked as A1, A3 and A6 along with four others. The accused were charged, found guilty and sentenced to undergo imprisonment as shown below:

Accused	Charge	Guilty	Sentence
A1 to A7	148 IPC	Not guilty	--
A1 to A3	302 r/w 34 IPC	A1 & A3	-326 IPC 2 yrs. RI
A2		acquitted	
A4 to A7	302 r/w 149 IPC	Not guilty	
A4 to A6	324 IPC	A4 & A5	not guilty
A6	324 IPC		1 yr. RI
A7	326 IPC	Not guilty	
A2	27 Indian Arms Act	Not guilty	

3. The short facts necessary for the disposal of this appeal and criminal revision can be stated as follows:

a) The accused, who were arrayed as A1 to A7, one Ramesh, who was absconding accused and his case was split up, and P.Ws.1 to 6 were all hailing from same political party. On 30.11.1991, an election was conducted for the local District Secretary and there was a competition between the group of deceased and the first accused. There was a clash between the group of the deceased and the first accused. A1 sustained injury and due to that, the said election was stopped. A1 was aggrieved over the said incident.

b) On 27.4.1992 at about 8.30 p.m., PW1 and his brother Panneerselvam, Karikalan, Murthy, Veerayan, Pakianathan and Pazhakadai Durai were all went to

Thambu cheppal Shop situated in the Old Bus stand. At that time, an Ambassador Car bearing registration No.TNZ 1616 was came there. In that Car A1 to A7 were travelling and they parked the said car in the entrance of the bus stop and came out of the car. Further two cars bearing Registration Nos.TSF 7785 and TMF 8671 came there and from the said two cars, 10 to 15 persons have got down. A2 was holding a gun, while the other accused were armed with deadly weapons. At that time A1 told his brother A2 that "Pannerselvam is here shoot him". Immediately, A2 shot at him with his gun on his right leg and the first accused cut the right leg of the said Pannerselvam using Aruval, A3 cut him on his left leg. At that time, Pannerselvam raised alarm and fell down. In order to restrain the attack, Murthy was attacked by A4 and A5 on his left leg and left thigh using Aruval. A6 attacked Murthy with Aruval on his left leg and right shoulder. Ramesh attacked Murthy on his right side head by using bottom portion of Aruval. Ramesh also attacked Veerayan on his left cheek and A7 attacked Veerayan on his right shoulder and head using Aruval. They raised alarm. Chairs were thrown out. Then A2 raised a slogan "Panner is closed, let us go". After that, all the accused fled away from the scene of occurrence through the said Cars. Pannerselvam, Murthy and Veerayan were taken to Government Hospital, Pattuk kottai by P.W.1 in a Cycle Rickshaw. In the hospital, the doctor declared Pannerselvam dead. Then P.W.1 rushed to the Police Station at 9.30 p.m. and lodged a complaint, which was marked under Ex.P.1. On the strength of which, a case came to be registered.

c) P.W.15, Devendran, Constable, who was on duty at that time, registered a case in Crime No.374/92 under Sections 147, 148, 341, 324, 30 7 and 302 IPC and 25(1) of Indian Arms Act. The printed F.I.R Ex.P.1 4 was despatched to the Judicial Magistrate, No.1, Pattukkottai and the copies were sent to officials. P.W.17 Vaithyalingam Inspector on receipt of the copy of F.I.R. took up investigation, proceeded to the site of occurrence on 28.4.1992 at 6.00 a.m. He prepared observation mahazar in the presence of the witnesses under Ex.P.2 and rough sketch Ex.P.15. On the same day, he recovered MO4 blood stained earth, MO5 sample earth, MO7 broken glass pieces of car, MO8 Yamaha Motor Cycle and MO1 Steel chair under Ex.P.3 mahazar in the presence of the witnesses. He visited Pattukkottai Nadimuthu Nagar Corporation Park and seized the damaged Ambassador Cars MO2 TNZ 1616, MO3 TMF 8671 and MO9 TSF 7785 under Ex.P.4 mahazar in the presence of the witnesses.

d) On the same day at about 10.30 a.m. to 12.30 p.m., he conducted inquest on the body of the deceased in the presence of the panchayatars and prepared Ex.P.16 inquest Report. He examined PW1 and other witnesses and recorded their statements. The dead body was sent through a Constable along with a requisition for post-mortem to the Thanjavur Medical College Hospital. On receipt of information, P.W.12 Doctor Uma Maheswari conducted post-mortem on the dead body of Pannerselvam and has given post-mortem report, which was marked as Ex.P.9. The Doctor opined that the deceased would appear to have died of shock and haemorrhage due to cut injuries of the lower limbs. P.W.10 Dr. Ambujam examined P.W.2 on 27.4.1992 at 11.50 p.m. P.W.11 Dr. Anantharamakrishnan examined Moorthy, who was not examined as witness, and found the following injuries:

1. Incised wound over 7 x 3 (Rt) Knee exposing the muscles and patella. Fresh blood present.
2. Incised wound lat. Aspect of (Lt) leg muscles cut 3 x 3 x 3 cm

3. Lacerated wound (Rt) Tempero-parietal 2x2x2
4) Incised wound (Rt) arm 3x2, depth not assessed.
Fresh blood present
5) Incised wound (Rt) (N.C.) 3 x 3 x 3 cm
The wound certificate was marked as Ex.P.7.
e) P.W.17 Vaithialingam Inspector examined P.W.5 and other witnesses on 29.4.1992 at about 11.05 a.m. He examined one Ramesh, who underwent treatment in the Thanjavur Medical College hospital. On the very day, at about 11.55 a.m. he arrested A6 and A6 was sent to judicial remand. MOs recovered were sent for chemical examination by the concerned court. The remaining witnesses were also examined. P.W.18 Subramaniam Inspector took up further investigation, examined PWs.10,11 and 16 and completed the investigation. He laid a charge sheet.
4. In order to prove the charges levelled against the appellants and the other accused, the prosecution examined 18 witnesses and marked 16 exhibits and 12 M.Os. On completion of the evidence on the side of the prosecution, all the accused were questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. But they would further add that they sustained injuries at the time of occurrence and PWs were aggressors. No defence witnesses were examined. On consideration of the rival submissions made and scrutiny of the materials available, the trial court found the accused Nos.1 and 3 guilty under Section 326 and A6 was found guilty under Section 324 IPC, while acquitted all other accused and the appellants herein also in respect of other charges levelled against them.
5. Advancing his arguments on behalf of the appellants, the learned counsel made the following submissions for consideration by this Court. According to the prosecution case, 8 named persons, who were arrayed as A1 to A7 and one Ramesh, who was subsequently acquitted in the split up case along with 10 to 15 other persons armed with deadly weapons came to the place of occurrence in three Ambassador cars and attacked the deceased and others. The trial court found A1, A3 and A6/ appellants herein guilty, while acquitted all other accused. Having accepted the defence case in respect of all other accused, namely A2, A4, A5 and A7 and disbelieved that part of the prosecution case against them, the trial court should have acquitted all the accused. There are so many circumstances indicated to show that P.W.1, who was an informant, could not have been available at the place of occurrence. Even the eyewitnesses examined by the prosecution do not speak about the presence of P.W.1 at the time of occurrence, and hence, it would be clear that P.W.1 was not present at the time of occurrence. Hence, the case registered on the basis of the complaint given by P.W.1 looses its vigour. The defence was able to show that A6, A7 and Ramesh against whom the case was separately conducted were also sustained injuries. A6 was examined by P.W.9 Doctor, who has issued Ex.P.5 wound certificate. It is pertinent to note that A6 was examined at 10.00 p.m. within 1-1/2 hours from the time of occurrence, where he has categorically stated as to how he was attacked by number of persons. There is also evidence to show that Ramesh against whom the case was separately conducted was also injured. A scrutiny of the wound certificate would clearly show that he sustained cut injuries and also bleeding injuries. The prosecution has not made any attempt as to how the accused sustained injuries at the time of occurrence. It was also brought to the notice of the

lower court that a complaint was lodged by A6 immediately and a case was registered in Crime No.376 of 1992 by the same police. It is a matter of surprise to note that the Investigating Officer, who has admitted that when he went to the hospital he found A6, A7 and the other accused with injuries, has neither investigated the said persons nor tried to know whether there was any case registered at the instance of A6, but the fact remains that a case was actually registered at the instance of A6. The same was not taken into consideration by the trial court. In the instant case, there were so many infirmities and lacuna incurable at the time of investigation, and thus, the suppression on the part of the investigation as to the case registered at the instance of A6 and further what happened to the said case, would all go a long way that the trial court could not appraise or make proper appreciation of the evidence adduced by the prosecution and to arrive at a correct conclusion, and hence, in view of all the above, the trial court should have acquitted the appellants.

6. Arguing for the revision petitioner, the learned counsel would submit that the trial court without proper appreciation of the evidence has acquitted some of the accused in respect of all the charges and the appellant before this Court in respect of Sections 302 r/w 34 and 149 IPC. The eyewitnesses, namely, PWs.1 to 3 have categorically spoken about the overt act committed by A1 and A3 in a clear terms. Their evidence was also corroborated by the medical evidence. Under the stated circumstances, the trial court should have found both the accused guilty under Section 302 IPC. The trial court has not found the accused guilty under Section 149 IPC and other provisions relating to unlawful assembly, since no weapon has seized. The non seizure of weapons in a case of murder would not in any way fatal to the prosecution case and on that ground, the prosecution case cannot be disbelieved. The contention put forth by the appellants' side that the injuries on the accused/appellant were not explained by the prosecution cannot be countenanced. The same contention was also raised before the trial court, but the trial court was not inclined to accept the same, since the injuries found on A6, A7 and one Ramesh, who was an absconding accused, were simple and superficial, which the prosecution was not called upon to explain. Insofar as the contention regarding Cr.No.3 76/92 was concerned, the non production of F.I.R. and the connected records has not in no way affected the case of prosecution, since there is nothing to show that the Crime No.376/92 came to be registered in relation to the same transaction in question, and thus, without proper appreciation, the trial court has acquitted the accused for the charges under Section 302 and other provisions, and hence, the conviction and sentence insofar as that part is concerned has got to be modified.

7. Answering to the above contentions, the learned Government Advocate would submit that the trial court on proper appreciation of the evidence has found A1 and A3 guilty under Section 326 IPC and A6 was found guilty under Section 324 IPC. It is true that a case in crime No.376/92 came to be registered at the instance of A6 at 11.30 p.m. under Sections 341, 323 and 324 IPC. It is also true that the copy of F. I.R and other connected records were not produced before the trial court. The trial court considered the injuries that were sustained on the accused at the time of occurrence and found they were simple and superficial, and hence, the prosecution was not called upon to explain the same. Hence, the judgment of the trial court has got to be affirmed.

8. This Court paid its full and complete attention on the rival submissions made and had a close scrutiny of the materials available.

9. Admittedly, there was enmity that prevailed between the first accused and the deceased Pannerselvam due to political rivalry. The gist of the prosecution case was that on 27.4.1992 at about 8.30 p.m., the accused Nos.1 to 7, one Ramesh absconding accused and 10 to 15 persons came with three cars. A2 was holding gun and all other accused were armed with deadly weapons. On seeing the deceased, A1 told his brother A2 that "Pannerselvam is here, shoot him". Immediately, A2 shot at the deceased with his gun on his right leg and all other accused have also attacked him on different parts of his body. PW2 and Murthy, who was not examined, since deceased, were also shown as injured. According to the prosecution, P.Ws.1 to 5 were eyewitnesses. But, P.Ws.4 and 5 have turned hostile, and hence, the prosecution wanted to rely on the evidence of P.Ws.1 to 3.

10. The learned counsel for the appellants brought to the notice of the court a few circumstances, which casts a doubt whether P.W.1 was present at the time of occurrence. The occurrence, admittedly, has taken place in front of the shop of P.W.6. But, in his evidence, he has not spoken anything about the presence of P.W.1. Even the rickshaw puller also has not spoken anything about the presence of P.W.1. But, P.W.1 has claimed that he took the deceased and other injured to the hospital. The medical officer has also not spoken anything about the availability of P.W.1. Hence, it is very doubtful whether P.W.1 was present at the time of occurrence. On the strength of the complaint given by P.W.1, a case came to be registered in the instant case. It could be well said that though P.W.1 was not present at the time of occurrence, he set the law in motion. Barring his evidence what was available for the prosecution was the evidence of P.Ws.2 and 3.

11. This court is able to notice two serious infirmities in the prosecution case, namely, the non explanation of the injuries found on A6 , A7 and one Ramesh against whom the case was conducted separately by the Court of Sessions and the suppression of F.I.R. and the connected records in Crime No.376/92, which came to be registered at the instance of A6. As could be seen from the available materials, A6 was examined by P.W.9 Doctor at 10.00 p.m. He informed to the Doctor that he was attacked by four known persons, which has been recorded. Ex.P.5 was the wound certificate in respect of A6. The following injuries were found on A6:

1) Laceration on the (Rt) fore head, obliquely placed size 3"/1"/2" Bleeding present.

2) Three cut injuries on the (Lt) Thumb and finger is hanging loosely.

3) Three cut injuries on the (Rt) side Transversely placed one at the heel, one at the base of toe, another at the base of little toe.

This Court is able to notice incised wound also. Apart from that from the evidence of Investigating Officer, it is clear that injuries were found on A7 and other accused also. It is a matter of surprise to note that When the Investigating Officer went to the hospital to effect the arrest on A6 and A7, he noticed injuries caused on them. But, he did not enquire about the same. The contention of the learned counsel for the revision case and the learned Government Advocate that the injuries were superficial and hence the prosecution was not called upon to explain cannot be accepted in view of the nature of the injuries as could be evident from Ex.P.5 wound certificate. Insofar as the injuries were concerned, number of questions were put by the

defence to the eyewitnesses, namely, P.Ws.2 and 3. But, they plead no knowledge about the same. Hence, it is a case where the prosecution has not explained the injuries sustained by the accused in the cause of the same transaction. A case came to be registered on the complaint of A6 in Crime No.376/92 at 11.30 p.m. on the very day. When a question was raised by this Court to the prosecution, it is admitted that a case was registered in Crime No.376/92 on the complaint of A6 at 11.30 p.m. under Sections 341, 323 and 324. Hence, it cannot be now stated that the complaint given by A6 was pertaining to some other transaction. No doubt, the accused were sustained injuries on the same transaction. If so, a duty is cast upon the prosecution to produce the said F.I.R and all other connected records and must also explain what happened to the F.I.R and whether the investigation was taken up or not. On the contrary, when these questions were put to the Investigating Officer, he has stated that he had no knowledge about the registration of the case in Crime No.376/92. This Court is of the view that the prosecution has suppressed all the materials pertaining to Crime No.376/92 which has arisen in respect of part and parcel of the same transaction. Without the presence of the same, the trial court cannot take correct decision in the matter.

12. Taking into consideration that no explanation was tendered by the prosecution in respect of the injuries found on A6, A7 and other absconding accused and the suppression of the materials in respect of Crime No.376/92, this Court is of the view that it would not be possible to take a correct decision in the matter on the testimony of P.Ws.2 and 3, which is not free from doubt, and hence, this Court is of the view that the judgment of the trial court finding A1, A3 and A6 guilty has got to be set aside. Accordingly, this court is inclined to set aside the judgment of the trial court in respect of A1, A3 and A6.

13. In the result, the criminal appeal is allowed setting aside the judgment of conviction and sentence by the court below in respect of A1, A3 and A6. The appellants/accused Nos.1,3 and 6 are acquitted of the charges under Sections 326 and 324 IPC ectively. Bail bonds, if any, executed by the appellants/accused Nos.1,3 and 6 shall stand cancelled. The Court is unable to see any merit in the criminal revision case seeking enhancement of punishment. Accordingly, the criminal revision case is dismissed. Consequently, connected Crl.M.P. is closed.

Index : Yes
Internet : Yes

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To

1. The Judicial Magistrate, No.1, Pattukkottai, Thanjavur
2. The Judicial Magistrate, No.1, Pattukkottai, Thanjavur
through the Chief Judicial Magistrate, Thanjavur
at Kumbakonam
3. The Sessions Judge, Thanjavur
4. The Superintendent, Central Prison, Tiruchirappalli

5. The Public Prosecutor, High Court, Madras
6. The Dy. Inspector General of Police, Chennai-4
7. Mr.O.Srinath, Govt. Advocate (Crl. Side)
High Court, Chennai
8. The Inspector of Police, Pattukkottai Police Station,
Thanjavur District